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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,013	03/29/2004	Gavriel J. Iddan	P-5683-US	8980
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Pearl Cohen Zedek Latzer, LLP			EXAMINER	
1500 Broadway			RAMIREZ, JOHN FERNANDO	
12th Floor				
New York, NY 10036			ART UNIT	PAPER NUMBER
			3737	
			MAIL DATE	DELIVERY MODE
			06/12/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,013

Applicant(s)

IDDAN, GAVRIEL J.

Examiner

JOHN F. RAMIREZ

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-15, 17-18, 20-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 17, 18 and 20-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

After a review of applicant's remarks, all necessary changes to the claims have been entered. Accordingly, new claims 23-30 have been added.

Applicant's arguments, see remarks, filed December 1, 2008, with respect to the rejection(s) of claim(s) 14 and 23 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, the following new office action is provided in view of newly found prior art reference in order to expedite the prosecution of this application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

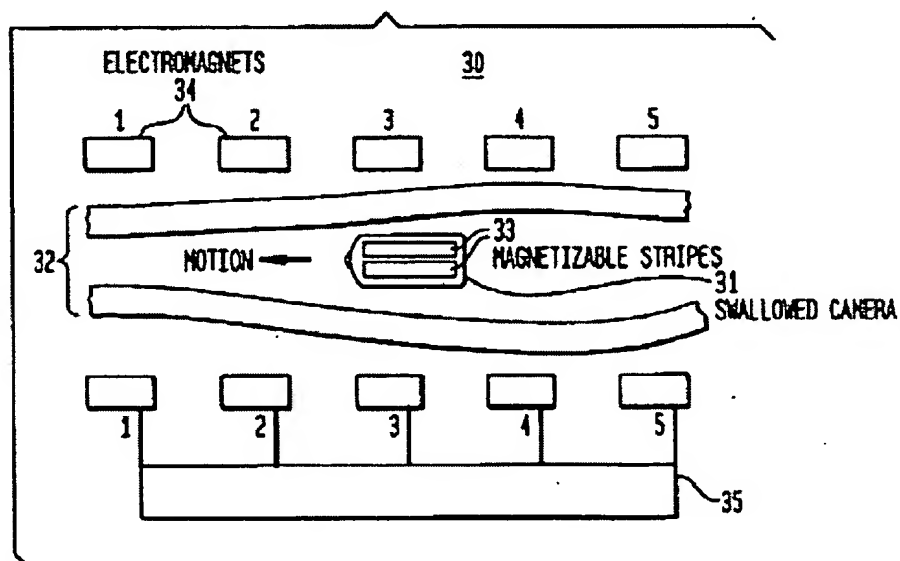
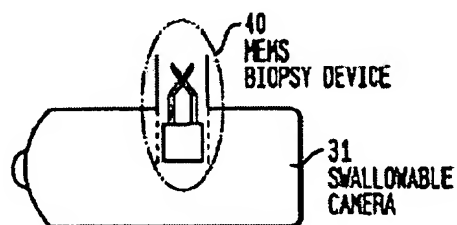
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Art Unit: 3737

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 14-15, 17-18 and 20, 22-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Jin (6,776,165).

FIG. 3**FIG. 4A**

Art Unit: 3737

In regards to claims 14-15, 17-18, 20-22 and 30, Jin teaches a navigable capsule useful for remote controlled in-vivo imaging, biopsy and programmable drug release as shown in Figs. 2 and 3 and see abstract, comprising: an in-vivo swallowable capsule device including at least: an imager detector (13); a wireless transmitter 15 (including antenna) and a normally MEMS switch electrically connected to a processing circuit (see Figs. 4A-B; col. 3, lines 36-49), and the switch is configured to change a property of the in-vivo device (col. 3 lines 50-67; col. 4, lines 1-7; col. 3, lines 36-49); and a control device located outside a patient's body (see abstract, fig. 3, col. 1, line 60 - col. 2, line 4), the control device including at least a magnetic field source producing a magnetic field sufficient to keep the switch open (col. 3, lines 39-49), and a controller to receive data produced by the in-vivo location and, in response, operate the magnetic field source to operate the MEMS switch to change a property of the in-vivo device (col. 4, lines 20-48; col. 3, lines 39-49; col. 3, line 58 - col. 4, line 7), The MEMS device can also be commanded by FM/microwave signals (col. 3, line 58 - col. 4, line 7).

With respect to claims 23-29, Jin teaches all the structures as set forth above. The method concerning the respective steps would be inherently met by the disclosure as applied in claims 14-15, 17-18, 20, 22 and 30.

Claim Rejections - 35 USC § 103

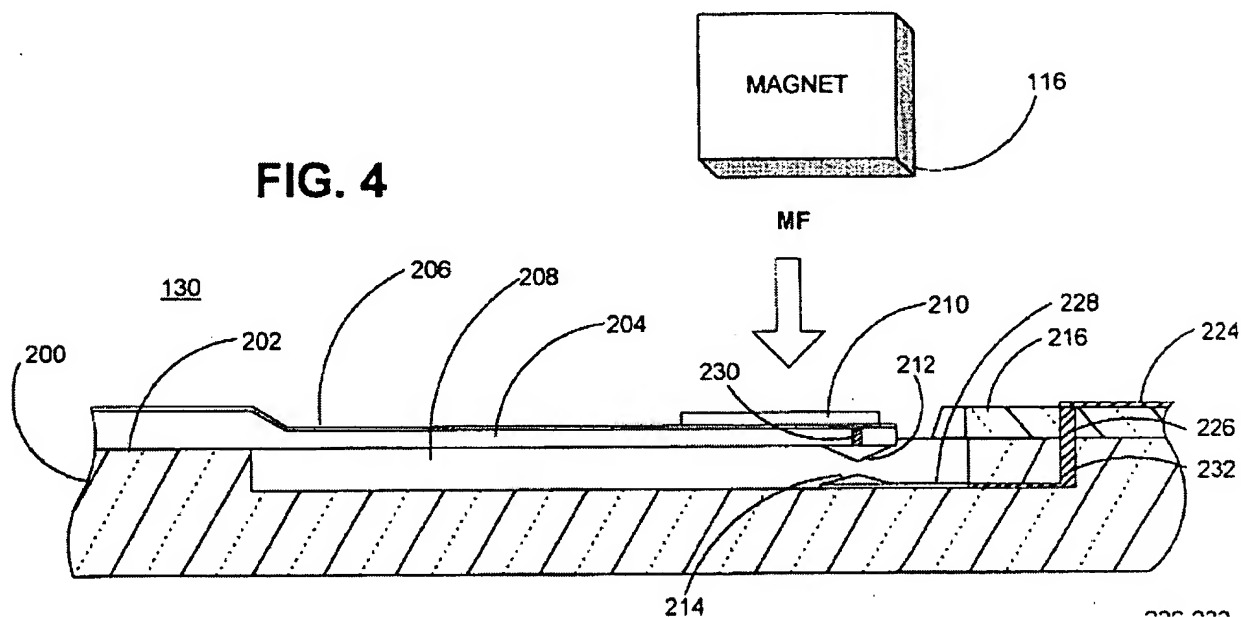
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3737

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jin (6,776,165) in view of Thompson (US 6,580,947).



Jin et al. teaches all the limitations of the claimed subject matter as applied to claim 14, except for mentioning specifically, wherein the switch comprises: a first ferromagnetic conductive terminal; a flexible ferromagnetic conductive terminal; and a non-magnetic conductive terminal; wherein the first ferromagnetic conductive terminal and the non-magnetic conductive terminal are electrically isolated. However, in the same field of endeavor, Thompson teaches an MEMS switch comprising a first ferromagnetic conductive terminal (FIG. 4, element 206,210); a flexible ferromagnetic conductive terminal (FIG. 4, element 204,212); and a non-magnetic conductive terminal (FIG. 4, element 224); wherein the first ferromagnetic conductive terminal and the non-

Art Unit: 3737

magnetic conductive terminal are electrically isolated (FIG. 4, element 200), also see description of figures 3 and 4 in col. 9 line 44 thru col. 10 line 59.

It would have been obvious to those skill in the art to modify the Jin's device with a MEM switch as taught by Thompson in order to provide a small, rugged, simple and easy to interface with simple switch processing circuitry to cause an implantable medical device to change modes of operation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN F. RAMIREZ whose telephone number is (571)272-8685. The examiner can normally be reached on (Mon-Fri) 7:00 - 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/811,013
Art Unit: 3737

Page 7

/J. F. R./
Examiner, Art Unit 3737


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